

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SHENA NICOLE LAWSON and
STEPHANIE DIANE LAWSON, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

HOWARD LAWSON,

Respondent-Appellant.

UNPUBLISHED

November 16, 2006

No. 270260

Clinton Circuit Court

Family Division

LC No. 05-017787-NA

Before: Murphy, P.J., and Meter and Davis, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(a)(ii), (b)(i), (c)(i), (g), and (j). We remand to the trial court for clarification of whether service by publication occurred with regard to respondent.

Respondent asserts on appeal that the trial court lacked personal jurisdiction either because service by publication was not made, or if made, because the trial court erred in ordering publication without first inquiring about petitioner's attempts to locate respondent and making a finding that personal service was impracticable and in ordering publication in a Clinton County newspaper when respondent resided in Georgia.

This Court reviews the issue of personal jurisdiction de novo. *In re Terry*, 240 Mich App 14, 20; 610 NW2d 563 (2000). The trial court's jurisdiction is derived from statute, and failure to comply with statutory notice requirements renders jurisdiction over a respondent defective and the order terminating his parental rights void. *Id.* at 21; *In re Mayfield*, 198 Mich App 226, 230-231; 497 NW2d 578 (1993), citing *In re Brown*, 149 Mich App 529, 540; 386 NW2d 577 (1986). In a child protective proceeding, the parent or guardian of a child, or one named as a respondent, must be personally served with the petition and hearing notice, unless the trial court is satisfied that personal service is impracticable, in which case the court may direct alternate service by publication. MCL 712A.12; MCL 712A.13; MCR 3.920(B)(2)(b) and (4)(b). Respondent was the children's legal father, despite his lack of custody for several years. The requirement for personal service applies to noncustodial parents as well as custodial parents. *In re Adair*, 191 Mich App 710, 713; 478 NW2d 667 (1991).

The trial court did not err in ordering service by publication in a Clinton County newspaper. Respondent's whereabouts were unknown for the last 11 months of this proceeding. By way of a motion for alternate service, petitioner informed the trial court that its efforts to locate respondent included conducting a search of the Department of Corrections, an Internet search, an information inquiry for the state of Georgia, and a request for a home study by the Georgia Department of Human Resources. The evidence showed that personal service on respondent was impracticable, and that service by publication was appropriate. Given the fact that respondent's residence was unknown, but that respondent knew the children were under the jurisdiction of the Clinton Circuit Court, Family Division, publication in a newspaper in the county of jurisdiction was appropriate.¹

However, the lower court record does not indicate whether publication was made. The proof of service regarding publication was not signed, dated, or notarized. An affidavit of publication was not contained in the lower court record, MCR 3.920(H)(3) and MCR 2.106(G)(1),² and the trial court did not inquire of petitioner before commencing the termination hearing whether publication had occurred.

This case is remanded to the lower court for clarification regarding whether publication actually occurred. If so, the order terminating respondent's parental rights is affirmed. If not, the trial court lacked personal jurisdiction over respondent, and the order terminating his parental rights is vacated. This Court retains no jurisdiction.

/s/ William B. Murphy

/s/ Patrick M. Meter

/s/ Alton T. Davis

¹ MCL 712A.13 provides, in part, that it "shall be sufficient to confer jurisdiction if . . . publication is made once in some newspaper printed and circulated in the county in which [the] court is located at least one week before the time fixed in the summons or notice for the hearing."

² MCR 3.920(H)(3) provides, "If the manner of service used involves publication, proof of service must be made in the manner provided in MCR 2.106(G)(1)[.]" MCR 2.106(G)(1) provides:

(1) Publication must be proven by an affidavit of the publisher or the publisher's agent

(a) stating facts establishing the qualification of the newspaper in which the order was published,

(b) setting out a copy of the published order, and

(c) stating the dates on which it was published.